

CR-103 RULEMAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Health Services Analysis Division
CR-103 Filing Date: May 12, 2003

Attachment (2)

Purpose of rule

Purpose: Chapter 296-19A WAC amends and revises the existing chapter 296-19A.

New sections:

The new section WAC 296-19A-025 moves language from the existing WAC 296-19A-020 to define criteria the department considers when determining whether vocational rehabilitation services will be offered to industrially injured or ill workers.

New section WAC 296-19A-065 establishes Ability to Work Assessment (AWA services criteria.

New section WAC 296-19A-125 clarifies the purpose of forensic services.

New section WAC 296-19A-135 sets forth the department's reporting requirements for forensic services.

New section WAC 296-19A-137 establishes the department's requirements for a stand alone job analysis referral type.

New section WAC 296-19A-191 establishes pre-job accommodations available for injured workers.

New section WAC 296-19A-192 establishes funding available for pre-job accommodations.

New section WAC 296-19A-193 establishes service requirements for pre-job accommodations.

New section WAC 296-19A-245 moves provider protest appeal rights from WAC 296-19A-240.

Amended sections:

WAC 296-19A-010(1)(c) changes language to "restrictions" to provide consistency with industry vernacular. WAC 296-19-010(4) re-organizes language in the last bullet of the table clarifies that when an injured worker moves to a different labor market as a result of a medical condition arising from the occupational injury or disease, the department will use the worker's new labor market. WAC 296-19A-010(7) and (8) adds the language "demonstrated" behavior. WAC 296-19A-010(9) and (10) define the purpose of their corresponding paragraphs to resolve provider confusion between the two distinct types of services.

WAC 296-19A-020 was clarified to provide more consistency with statute and to become more reflective of the title in this section.

WAC 296-19A-030(2)(b) and (c) establishes that the department would no longer be required to send reports to employers that do not request them and eliminates the requirement to send written notice to an injured worker if a complaint of non-cooperation has been made. The

department proposed an amendment to WAC 296-19A-030(5) to allow vocational providers to provide, "...upon request, copies of reports and attachments submitted to the referral source to the injured worker or their representative." RCW 51.28.070 provides authority for injured workers or their representatives to request copies of documents or their industrial insurance claims file. As a result, the department determined that it was appropriate to allow injured workers to request this information from vocational providers rendering services

WAC 296-19A-040 adds language to include "stand alone job analysis" as a service that requires authorization.

WAC 296-19A-045 adds language to include "WAC 296-19A-137" as a rule that applies only to the department.

WAC 296-19A-060(1) changes language to clarify progress reports must be submitted every thirty calendar days from the date of the electronic referral. In response to public commentary, the amendment in WAC 296-19A-060(2) acknowledges that not all of the documentation requested in this section is always obtainable, by allowing the provider to "address" issues. WAC 296-19A-060(2)(c) clarifies that providers are required to have the job analysis medically reviewed when submitting a closing report. WAC 296-19A-060(2)(e)-(h) makes organization changes to clarify what items must be included or addressed in a closing report.

WAC 296-19A-070(1) clarifies that the section is referring a "report." WAC 296-19A-070(1)(i) adds language to clarify that providers must address any gaps in employment in this work history. WAC 296-19A-070(1)(j) adds language to include "[t]he report must address the first four return to work priorities set forth in RCW 51.32.095(2)." WAC 296-19A-070(2)(a)(i) Language addition to clarify that provider may report one or more job possibilities for which the injured worker may be qualified. WAC 296-19A-070(2)(a)(ii) clarifies that providers are required to have the job analysis medically reviewed when submitting a closing report. WAC 296-19A-070(2)(a)(iii) clarifies that when a job analysis is not obtainable, the vocational provider may submit medically approved physical capacities information. WAC 296-19A-070(2)(b)(i) clarifies that providers identify the reasons that an injured worker may benefit from vocational rehabilitation services. WAC 296-19A-070(2)(b)(ii) clarifies that providers should submit labor market information when it is necessary to support the recommendation. WAC 296-19A-070(2)(c)(ii) clarifies that providers identify barriers that make it unlikely that an injured worker will become employable at gainful employment as a result of vocational services. WAC 296-19A-070(2)(c)(iii) clarifies the department's expectation that vocational providers submit all necessary information to support their determinations. WAC 296-19A-070(2)(d) makes organizational changes and language additions to clarify that "return to work" is a recommendation that can be made in AWA. WAC 296-19A-070(3) changes language to clarify that the documentation regarding work release should be obtained before contacting the department. 070(3) and (4) clarifies when the provider must inform the department that the injured worker is medically released to work and when a closing report is required.

WAC 296-19A-080 changes language to clarify progress reports must be submitted every thirty calendar days from the date of the electronic referral.

WAC 296-19A-090(3) clarifies that the development of a plan is billable under plan development. WAC 296-19A-090(6) clarifies the department's intentions and identifies that these activities are an important element in ensuring the success of a plan.

WAC 296-19A-100(1) changes language to clarify progress reports must be submitted every thirty calendar days from the date of the electronic referral. WAC 296-19A-100(2)(h)(ii) changes language to "statement" clarifies the process and the document available from the department. WAC 296-19A-100(3) changes language to clarify that the provider should submit closing reports even in circumstances when a proposed goal has not been identified. WAC 296-19A-100(3)(c) requires the provider to determine whether further services are appropriate.

WAC 296-19A-110(1) changes language to clarify that providers are responsible for injured workers starting and progressing in a plan. WAC 296-19A-110(6) acknowledges that providers cannot resolve all possible barriers and allows providers to address these issues with supporting documentation if they cannot be brought to resolution. WAC 296-19A-110(7) clarifies that providers may assist with job search assistance when appropriate in plan implementation. WAC 296-19A-110(10) allows providers to assist injured workers in obtaining preferred worker status if it is appropriate.

WAC 296-19A-120(1) changes language to clarify progress reports must be submitted every thirty calendar days from the date of the electronic referral. WAC 296-19A-120(3)(f) would assist the department in determining whether a plan could enable the injured worker to become employable at gainful employment in the future.

WAC 296-19A-130 more clearly describes the requirements for a forensic evaluation.

WAC 296-19A-140 makes organizational and language changes to clarify and better reflect the information needed and the desired format for a Labor Market Survey.

WAC 296-19A-170(1) will allow providers to use the DOT code but also use other sources as they become available. WAC 296-19A-170(2) clarifies that vocational providers are required to include the employer name and contact information in a job analysis when the analysis is based on site-specific information. WAC 296-19A-170(3) defines the term "essential functions" and clarifies the product the department is requesting from the provider. WAC 296-19A-170(5) changes language to "skills" clarifies by providing consistency with other language in chapter 296-19A WAC. WAC 296-19A-170(6) clarifies this requirement, which would increase flexibility for vocational providers and decrease costs. WAC 296-19A-170(7) clarifies that describing environmental hazards is only required if it is pertinent.

WAC 296-19A-180 is intended to ensure that each WAC section is consistent with and addresses the specific topic for the WAC section in question and more clearly states the requirements and expectations for these services.

WAC 296-19A-190 is intended to ensure that each WAC section is consistent with and addresses the specific topic for the WAC section in question and more clearly states the requirements and expectations for these services.

WAC 296-19A-200(1) clarifies that the provider's responsibility is to provide assistance to the employer when applying for job modification assistance. WAC 296-19A-200(2)(d) is intended to more clearly state the requirements for these services.

WAC 296-19A-210(1)(b) clarifies and more clearly states which providers are eligible for transition rights. WAC 296-19A-210(1)(b) extends the deadline for meeting the new requirements to November 30, 2010. WAC 296-19A-210(1)(c) clarifies that the VRC assigned to a referral is responsible for all of the work performed on that referral. WAC 296-19A-210(2)(a) removes backslashes and clarifies the term “VRC supervisor.” WAC 296-19A-210(2)(a) revises the language to clarify that experience must be “direct.” WAC 296-19A-210(2)(b) clarifies and more clearly states which providers are eligible for transition rights. WAC 296-19A-210(2)(b) clarifies and more clearly states which providers are eligible for transition rights. WAC 296-19A-210(3) deletes language included in WAC 296-19A-130 to alleviate redundancy. WAC 296-19A-210(3) clarifies that the change in experience requirements from 3 to 5 years would not be applied retroactively. WAC 296-19A-210(3) revises the language to clarify that experience must be “direct.” WAC 296-19A-210(4)(b) explains that interns not previously registered with the department would remain in internship status until they have obtained one of the required certifications. WAC 296-19A-210(4)(c) clarifies the department’s intention of providing transition rights to all interns who were registered with the department as of November 30, 2000 by clearly stating which providers are eligible for transition rights and the length of those rights. WAC 296-19A-210(4)(c) clarifies that this WAC provides transition rights only to those providers who were registered with the department as of November 30, 2000. WAC 296-19A-210(4)(e) limits an intern to work as an intern for up to 72 months full-time or part-time equivalent experience. WAC 296-19A-210(5) explains the allowable role of an intern. WAC 296-19A-210(6) explains the responsibilities of the provider as it relates to the electronic security requirements. WAC 296-19A-210(7) clarifies and more clearly states which providers are eligible for transition rights. WAC 296-19A-210(7) clarifies that eligible providers will have a “ten-year” period in which to meet the qualification requirements.

WAC 296-19A-240(2) clarifies that during on-site audits, auditors may copy any files or records for their review. WAC 296-19A-240(5) explains the number of days to send in materials for a desk audit is 30 days.

WAC 296-19A-260(4) includes the suspension or termination of a provider number.

WAC 296-19A-270(a) establishes additional situations in which the department may take corrective action for a provider’s failure to render prompt and efficient services. The department is adopting a “prudent practices” approach to the HIPPA regulations. WAC 296-19A-270(m) adopts this level of compliance for vocational providers.

WAC 296-19A-300(2) corrects two incorrect citations in this section.

WAC 296-19A-350(8) clarifies that only providers who bill for services must meet this requirement.

WAC 296-19A-400(2) clarifies the current policy that providers must maintain files for 5 years.

WAC 296-19A-440(3) and (4) clarifies the scope of vocational disputes and reinforces current policy regarding whether plan modifications could be disputed.

WAC 296-19A-480 sets forth the effective dates for these amendments.

CR-103 RULEMAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Health Services Analysis Division
CR-103 Filing Date: May 2, 2003

Attachment (3)
Citation of existing
rules affected by this
order

AMENDED SECTIONS:

WAC 296-19A 010 “Definitions.”

WAC 296-19A- 020 “When may the department offer vocational rehabilitation services?”

WAC 296-19A-030 “What are the responsibilities of the parties?”

WAC 296-19A-040 “What vocational rehabilitation services require authorization?”

WAC 296-19A-045 “Which rules under ‘department vocational rehabilitation referrals’ apply only to the department?”

WAC 296-19A-060 “What reports does the department require when early intervention services are provided at its request?”

WAC 296-19A-070 “What is an ability to work assessment?”

WAC 296-19A-080 “How often must written progress reports be completed and submitted during assessment activities?”

WAC 296-19A-090 “What are vocational rehabilitation plan development services?”

WAC 296-19A-100 “What reports does the department require when vocational rehabilitation plan development services are provided at its request?”

WAC 296-19A-110 “What are vocational rehabilitation plan implementation an monitoring services?”

WAC 296-19A-120 “What reports does the department require when vocational rehabilitation plan implementation and monitoring services are provided at its request?”

WAC 296-19A-130 “What are the requirements for a forensic evaluation?”

WAC 296-19A-140 “What information must a provider include in a labor market survey?”

WAC 296-19A-170 “What information must a provider include in a job analysis?”

WAC 296-19A-180 “What job modification assistance benefits are available?”

WAC 296-19A-190 “How much is available for job modification assistance?”

WAC 296-19A-200 “How does an employer apply for job modification assistance?”

WAC 296-19A-210 “What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers?”

WAC 296-19A-230 “Why does the department audit vocational rehabilitation providers?”

WAC 296-19A-240 “What authority does the department have to audit vocational rehabilitation providers?”

WAC 296-19A-260 “What are the possible consequences for a provider that does not comply with the RCWs, WACs or department policies?”

WAC 296-19A-270 “In what situation(s) can the department take corrective action(s)?”

WAC 296-19A-300 “How does the department evaluate performance when a vocational rehabilitation provider does not have either a performance rating with the department or previous experience delivering services to Washington injured workers?”

WAC 296-19A-350 “What are the requirements for case notes?”

WAC 296-19A-400 “What records are vocational rehabilitation providers required to maintain?”

WAC 296-19A-440 “What elements of a vocational determination may be disputed?”

WAC 296-19A-480 “When must providers comply with these rules?”

NEW SECTIONS:

WAC 296-19A-025 “What information does the department consider when exercising discretion?”

WAC 296-19A-065 “What are ability to work assessment (AWA) services?”

WAC 296-19A-125 “What is the purpose of forensic services?”

WAC 296-19A-135 “What reports does the department require when forensic services are provided?”

WAC 296-19A-137 “When can the department request a stand alone job analysis?”

WAC 296-19A-191 “What pre-job accommodations are available?”

WAC 296-19A-192 “How much is available for pre-job accommodations?”

WAC 296-19A-193 “What are the requirements for pre-job accommodations?”

WAC 296-19A-245 “What is the department’s formal appeal process?”

REPEALED SECTIONS: None CR-103 RULEMAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Health Services Analysis Division
CR-103 Filing Date: May 12, 2003

Attachment (4)
Description of changes
other than editing

WAC 296-19A-020

End the sentence with, "...likely to enable the industrially injured or ill worker to become employable."

WAC 296-19A-030

Add to WAC 296-19A-030(5) as the last sentence "This includes providing, upon request, copies of reports and attachments submitted to the referral source to the injured worker or their representative."

WAC 296-19A-045

Change language in this section to, "WAC 296-19A-050 through WAC 296-19A-137 pertain to referrals for vocational rehabilitation services made by the department."

WAC 296-19A-060(1)

Change this section to state, "(1) Progress Reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative every thirty calendar days from the date of the electronic referral...."

WAC 296-19A-065(8)

Add language as "(8) Assessing the industrially injured or ill worker's need for preferred worker status and educating the worker on the preferred worker benefit, if appropriate."

WAC 296-19A-070(1)(i)

Change language in (1)(i) to "Complete work history, addressing any gaps in employment, ..."

WAC 296-19A-070(1)(j)

Add as "The report must address the first four return to work priorities set forth in RCW 51.32.095(2)."

WAC 296-19A-070(2)(a)(ii)

Change to "When this is not obtainable, medically approved physical capacities information..."

WAC 296-19A-070(3)

Change to "The provider must immediately inform the department orally if the worker has returned to work or if the provider has documentation that the worker is medically released without restrictions or has returned to work. The provider must follow the oral notification with written notification within two working days."

WAC 296-19A-080

Change this section to state, "Progress Reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative every thirty calendar days from the date of the electronic referral...."

WAC 296-19A-090(6)

Change the language in WAC 296-19A-090(6) to “Identfy, evaluate, and plan education and training resources, when necessary.”

WAC 296-19A-100(1)

Change this section to state, “(1) Progress Reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker’s representative every thirty calendar days from the date of the electronic referral....”

WAC 296-19A-110(7)

Change the language to “job search assistance.”

WAC 296-19A-120(1)

Change this section to state, “(1) Progress Reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker’s representative every thirty calendar days from the date of the electronic referral....”

WAC 296-19A-120(3)

Add as (f) “If the plan is terminated before worker is employable, include a discussion of potential for return to this plan.”

WAC 296-19A-180

Change the language to the following:

“When may the department authorize job modifications?”

As provided for in section 13, chapter 63, Laws of 1982 (RCW 52.32.250), the supervisor or the supervisor’s designee in his or her discretion may authorize job modifications when the following criteria are met:

- 1) The claim is open or in statutory pension status; AND
- 2) Due to the restrictions related to the accepted industrial condition the worker:
 - a) is in a light-duty job (graduated or transitional) and the modification is necessary to return the worker to the job of injury or a new job; OR
 - b) is off work and the modification is necessary to return the worker to the job of injury of a new job; AND
- 3) An employer-employee relationship exists.

WAC 296-19A-191

Make the following changes to this section:

“When may the department authorize pre-job accommodations?”

As provided for in RCW 51.32.095(4), the supervisor or the supervisor’s designee in his or her discretion may authorize pre- job accommodations when the following criteria are met:

- 1) The claim is open or in statutory pension status; AND
- 2) The injured worker’s attending doctor certifies that the pre-job accommodations are medically necessary due to the effects of the accepted industrial condition; AND
- 3) The pre-job accommodation is medically necessary to enable the industrially injured or ill worker to:
 - a) participate in an approved retraining program; OR
 - b) perform the essential functions of a job or a return to work goal in which the worker is seeking employment consistent with a completed retraining plan or the recommendations of an ability to work assessment. AND
- 4) No employer-employee relationship exists.

WAC 296-19A-192

Strike all language after the second sentence.

WAC 296-19A-193

Change to: "What documentation must be submitted to the department for prejob accommodations?"

- 1) A vocational provider assisting the injured worker in applying for prejob accommodation assistance must submit to the department a prejob accommodation assistance application. Prejob accommodation assistance applications shall be submitted on a form prescribed by the department.
- 2) The prejob accommodation assistance application shall include, but is not limited to:
 - (a) A document supporting the need for prejob accommodation
 - (b) A description of the prejob accommodation
 - (c) An itemized account of each expense to be incurred in the prejob accommodation.
 - (d) An ownership agreement.
 - (e) Physician's certification of medical necessity.

WAC 296-19A-200(d)

Add (d) An ownership agreement.

WAC 296-19A-210(1)(b)

Change the language to: "...registered with the department as of November 30, 2000."

WAC 296-19A-210(1)(c)

Add "The VRC assigned to or directly receiving the referral from the referral source is responsible for all work performed by any vocational provider on that referral."

WAC 296-19A-210(2)(a)

Change language to "In order to supervise interns providing vocational rehabilitation services to industrially injured or ill workers beginning on or after December 1, 2000, the VRC supervisor must provide proof of five years full-time experience providing direct vocational services to Washington State injured or ill workers"

WAC 296-19A-210(2)(b)

Change the language to: "...registered with the department as of November 30, 2000."

WAC 296-19A-210(3)

Change to "In order to provide forensic services to the department, on or after the effective date of this rule, a VRC must... Vocational providers previously approved to provide this service, under chapter 296-19A WAC, will retain that status."

WAC 296-19A-210(3)

Change language to "... must provide proof of five years full-time experience providing direct vocational services to Washington State injured or ill workers"

WAC 296-19A-210(4)(c)

Change language to "...November 30, 2010."

WAC 296-19A-210(4)(c)

Change the language in first sentence to: "...registered with the department as of November 30, 2000."

WAC 296-19A-210(4)(e)

Change the language "...for more than seventy-two months..."

WAC 296-19A-210(5)

Remove the last sentence of the proposed language.

WAC 296-19A-210(7)

Change the language to "...registered with the department as of November 30, 2000,"

WAC 296-19A-210(7)

Change "six" to "ten" year period.

WAC 296-19A-270

Remove proposed language in WAC 296-19A-270(1)(a).

WAC 296-19A-400

Remove "Paper copies..." from proposed language

WAC 296-19A-480

Change to, "WAC 296-19A-480 When must providers comply with these rules?

(1) The amendments to the following section of chapter 296-19A WAC becomes effective on July 1, 2003:

WAC 296-19A-137 "When can the department request a stand alone job analysis?"

(2) The following amendments to chapter 296-19A WAC and new sections become effective February 1, 2004:

WAC 296-19A-010 "Definitions." WAC 296-19A-020 "When may the department offer vocational rehabilitation services?"

WAC 296-19A-025 "What information does the department consider when exercising discretion?"

WAC 296-19A-030 "What are the responsibilities of the parties?"

WAC 296-19A-040 "What vocational rehabilitation services require authorization?"

WAC 296-19A-045 "Which rules under 'department vocational rehabilitation referrals' apply only to the department?"

WAC 296-19A-060 "What reports does the department require when early intervention services are provided at its request?"

WAC 296-19A-065 "What are ability to work assessment (AWA) services?"

WAC 296-19A-070 "What is an ability to work assessment?"

WAC 296-19A-080 "How often must written progress reports be completed and submitted during assessment activities?"

WAC 296-19A-090 "What are vocational rehabilitation plan development services?"

WAC 296-19A-100 "What reports does the department require when vocational rehabilitation plan development services are provided at its request?"

WAC 296-19A-110 "What are vocational rehabilitation plan implementation and monitoring services?"

WAC 296-19A-120 "What reports does the department require when vocational rehabilitation plan implementation and monitoring services are provided at its request?"

WAC 296-19A-125 "What is the purpose of forensic services?"

WAC 296-19A-130 "What are the requirements for a forensic evaluation?"

WAC 296-19A-135 "What reports does the department require when forensic services are provided?"

WAC 296-19A-140 "What information must a provider include in a labor market survey?"

WAC 296-19A-170 "What information must a provider include in a job analysis?"

WAC 296-19A-180 "What job modification assistance benefits are available?"

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WAC 296-19A-240 "What authority does the department have to audit vocational rehabilitation providers?"

WAC 296-19A-245 "What is the department's formal appeal process?"

WAC 296-19A-260 "What are the possible consequences for a provider that does not comply with the RCWs, WACs or department policies?"

WAC 296-19A-270 "In what situation(s) can the department take corrective action(s)?"

WAC 296-19A-300 "How does the department evaluate performance when a vocational rehabilitation provider does not have either a performance rating with the department or previous experience delivering services to Washington injured workers?"

WAC 296-19A-350 "What are the requirements for case notes?"

WAC 296-19A-400 "What records are vocational rehabilitation providers required to maintain?"

WAC 296-19A-440 "What elements of a vocational determination may be disputed?"

CR-103 RULEMAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Health Services Analysis Division
CR-103 Filing Date: May 12, 2003

Attachment (6)

Effective dates of
rule: Permanent rules

(6) Specify effective date of adopted rules:

The amendments to the following section becomes effective on July 1, 2003:

WAC 296-19A-137 "When can the department request a stand alone job analysis?"

The following amendments and new sections become effective February 1, 2004:

WAC 296-19A-010 "Definitions."

WAC 296-19A-020 "When may the department offer vocational rehabilitation services?"

WAC 296-19A-025 "What information does the department consider when exercising discretion?"

WAC 296-19A-030 "What are the responsibilities of the parties?"

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